

**Kite, Robin**

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**From:** Rep.Mursau  
**Sent:** Friday, December 14, 2012 12:26 PM  
**To:** Kite, Robin; Gibson-Glass, Mary  
**Subject:** FW: FW: Draft review: LRB -0056/P1 Topic: Regulation of off-highway vehicles  
**Attachments:** LRB Letter November 6 \_Comments\_.pdf; LRB Legislation November 6 \_Comments\_.pdf

Robin & Mary,

Here are the comments from the organization Rep. Mursau is working with.

Tim Gary

-----Original Message-----

**From:** WOHVA-Executive Director [<mailto:wohva.ceo@charter.net>]  
**Sent:** Wednesday, December 05, 2012 2:35 PM  
**To:** Rep.Mursau  
**Subject:** RE: FW: Draft review: LRB -0056/P1 Topic: Regulation of off-highway vehicles

Tim,

I apologize for the delay in getting back to you. With the hunting season, it was difficult to assemble our review team. Thanks for your patience.

Attached you'll find the two documents you forwarded to us with our comments, thoughts and ideas embedded within.

I'll give you a telephone call next week Monday (December 10th at 11:00am) to discuss this legislation. If that date and time won't work for you please advise of another that will.

Also, I promised to forward you an email address for Dan Bergin (my second in discussions). You can email Dan at [coo@WOHVA.com](mailto:coo@WOHVA.com).

Thanks!

Happy Trails,

John Schnorr, Executive Director  
Wisconsin Off-Highway Vehicle Association (WOHVA) P.O. Box 1865 Fond du Lac, WI 54936-1865  
(715) 490-5463  
[ceo@wohva.com](mailto:ceo@wohva.com)

"Stay on the Trail or Stay Home"

On Thu, Nov 8, 2012 at 11:48 AM, Rep.Mursau wrote:

> John,  
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>

> Take a look at these and tell me what you think needs changing.  
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>  
> Tim Gary  
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>  
> From: LRB.Legal Sent: Tuesday, November 06, 2012 4:51 PM  
> To: Rep.Mursau  
> Subject: Draft review: LRB -0056/P1 Topic: Regulation of off-highway  
> vehicles  
>  
>  
> Following is the PDF version of draft LRB -0056/P1 and drafter's note.

**DRAFTER'S NOTE**

**FROM THE**

LRB-0056/P1dn

RNK&MGG:eev&wlj:jf

**LEGISLATIVE REFERENCE BUREAU**

November 6, 2012

This draft is a redraft of 2011 LRB-0339/P1. It is in preliminary form. Because the drafting instructions for this proposal were originally given to me in the form of draft language, and because that language doesn't conform in some respects to our drafting conventions or to the manner in which our statutes are structured, I have structured this draft in a manner that is similar to the way the laws regulating all-terrain vehicles and utility terrain vehicles (including registration procedures) are structured. I discussed this issue last session with John Schnorr of the Wisconsin Off-Highway Vehicle Association, and he concurred with this approach. Please note the following comments and issues:

1. From the instructions for this draft, and from the meeting at your office last session, I have understood that your intention is to allow an off-highway vehicle (OHV) to be operated on public land *only* on designated trails. This means that, for example, an OHV could not be operated on frozen waters which, if navigable when not frozen, are public waters. I have also understood from the instructions that an OHV must be registered only for the purpose of operation on an OHV trail. Thus, the draft does not require an OHV to be registered if it is operated elsewhere (unless it is a Class A OHV that must be registered under ch. 341, stats.). However, under this draft, certain restrictions that apply to the operation of an OHV generally, for example equipment requirements, apply to the operation of an OHV on any property, public or private. If these basic assumptions are incorrect, please let me know and I will redraft accordingly. **Is there confusion between an OHV (Class A) and a DOT Street Legal Passenger Vehicle? The Passenger Vehicle could become a Class A OHV for recreational trail riding. For example: A Jeep is used to commute to and from work during the week and then is also used for recreational trail use on weekends. Class B are not registered for street/highway use.**

2. I did not draft certain parts of the proposed language because that language was inconsistent with the instructions given at the meeting at your office last session in which we discussed this proposal. For example, the proposal includes language authorizing an OHV to cross a public road right-of-way in certain circumstances, but at our meeting Mr. Schnorr indicated that there was no need for any provisions authorizing an OHV to cross a right-of-way. If, after reviewing the draft and the drafting instructions, you find that there are provisions from the proposal that still

need to be added to the draft, please let me know and I will include them in the next version of the draft.

3. Your instructions included requirements for both civil penalties (forfeitures) and a criminal penalty (misdemeanor). I have assumed, for purposes of this draft, that you wanted to impose civil penalties, and not criminal penalties, for violations that do not involve the intoxicated operation of an OHV. For violations of the intoxicated operation law, see item 1 in Mary Gibson-Glass's drafter's note.

4. Under current law, s. 20.370 (3) (at), stats., appropriates amounts remitted to DNR from various safety instruction program fees for the purpose of those programs. That is, the fees from all of these programs are not specifically identified for use by the given program for which the fee was remitted. I have included the safety program fees under this draft in this appropriation. Is this OK or do you want a separate appropriation for these OHV safety program fees? **Yes.**

5. I recommend that the draft include a delayed effective date for certain provisions. Under the draft, funding for OHV trails comes from registration fees. The draft also specifies that these fees will fund state law enforcement operations and the grant program established in the draft. I don't know how long it will take to generate enough fees as a practical matter to fund all of these activities. Furthermore, will an OHV operator register an OHV if there are no trails on which to operate the vehicle? You may want to consider another funding source to provide initial funding for the construction of OHV trails. I recommend that you consult with Erin Probst at the Legislative Fiscal Bureau with regard to these funding issues. **Would it be possible to attach start-up funds for the Wisconsin Off-Road Vehicle Park in Forest County to the up-coming State Budget? Perhaps a project development grant to help this project start moving ahead (\$400,000)?**

6. Do you want the draft to include a Lac du Flambeau band registration program for OHVs that is similar to the program that applies to ATVs and UTVs under s. 23.33 (2g), stats.? **Yes and also include the Sokaogon-Chippewa Mole Lake Band of Indians.**

7. Please note that under this draft, the forfeiture procedure under ss. 23.50 to 23.85 in current law (including citation procedure) will apply to OHV violations. Is this OK? **Yes.**

8. Your instructions requested that the forfeitures collected for OHV violations be used to fund OHV enforcement laws and environmental restoration. The Wisconsin Constitution requires all forfeitures to be credited to the school fund. If you want to provide funding for the requested purposes, you may want to impose a surcharge in addition to the forfeiture amount and then direct that the surcharge be used for the purposes requested. **Please include a surcharge to be used to rehabilitate OHV damages and enforcement of OHV Laws.**

9. Your instructions included language that specifically prohibits destruction of wetlands. Because current law already prohibits damage to natural resources and generally prohibits the operation of a motor vehicle in or on a navigable water (see ss. 23.095 and 30.29, stats.), I did not include this language in this draft. **OK. Our purpose was to reinforce the protection of wetlands.**

10. The provisions with regard to helmet requirements in this draft are based on those

in the laws regulating ATVs. Is this OK? **Helmet laws should apply to all Class B operations. Class A currently comply with all DOT requirements (safety belts, child restraints, etc.).** ✓

11. The instructions included a requirement to create an OHV council. The instructions also included a requirement that the OHV council promulgate certain rules. Under Wisconsin law, councils do not have rule-making authority. If you wish to authorize the OHV council to promulgate rules, you may wish to create an OHV board rather than an OHV council. **See note in legislation pertaining to OHV Council.** ✓

12. In addition to the issues raised above, the draft contains embedded notes that raise other issues. Please review those notes as well.

- 3 -

If you have any questions, please feel free to call me.

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

Tim:

I have drafted the OWI provisions. In reviewing these please note the following:

1. I have not included any specific penalties for operating while intoxicated. Please look at s. 23.33 (13), stats., and let me know if you want to include any of those provisions that relate to intoxicated operation.

2. I have not included language to have violations under the OWI provisions count as violations for purposes of the regular motor vehicle OWI laws. This will be included in a later version of this draft once the other OWI penalties are finalized.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

D-N  
still  
need

at least 18 years old operating an OHV. Finally, if the operator is a person born on or after December 31, 1993, he or she must hold a valid safety certificate to operate the OHV on an OHV trail. This bill requires DNR to establish a program of instruction on OHV laws and to issue certificates to persons who successfully complete the program. These requirements are similar to the requirements that apply under current law concerning programs of instruction on ATV and UTV laws.

This bill prohibits a person from operating an OHV while under the influence of an intoxicant and requires an OHV operator to submit to certain screening tests if a law enforcement officer has probable cause to believe that the operator is violating or has violated the law prohibiting the intoxicated operation of an OHV. These provisions are similar to the provisions in current law relating to the operation of an ATV or UTV while under the influence of an intoxicant.

#### ***OHV council***

This bill creates an OHV council (council) consisting of nine members who are knowledgeable in the recreational use of OHVs. The bill requires DNR to distribute any rule that it proposes that affects the operation of OHVs to each member of the council for review and comment. The bill also requires DNR to consult with the council on proposed changes for the succeeding biennium in the appropriations and laws that affect OHVs and requires the council to meet to review the provisions affecting OHVs that are included in each executive budget bill.

#### ***OHV grant program and damage claim program***

This bill also requires DNR to establish a program to award grants to organizations that promote the operation of OHV vehicles in a manner that is safe and responsible and that does not harm the environment. An organization that receives a grant under this program must use the grant moneys to promote and provide support to the program of instruction on OHV laws. Under the bill, the grant program is funded by OHV registration fees.

Under this bill, DNR must also promulgate rules to establish a damage claim program to pay claims to owners of property damaged by the unauthorized operation of OHVs.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           SECTION 1. 15.347 (9) of the statutes is created to read:
- 2           15.347 (9) OFF-HIGHWAY VEHICLE COUNCIL. There is created in the department
- 3 of natural resources an off-highway vehicle council consisting of 9 members

✓

**Comment [JGS1]:** Please lower members from 9 to 5. This is consistent with the ORV Council for ATV's.

(pm) "Restricted controlled substance" means any of the following:

1. A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in subd. 1.

3. Cocaine or any of its metabolites.

4. Methamphetamine.

5. Delta-9-tetrahydrocannabinol.

(q) "Roadway" has the meaning given in s. 340.01 (54).

\*\*\*\*NOTE: Please review this definition to ensure that it meets your intent

Comment [JGS2]: Yes.

(r) "Snowmobile" has the meaning given in s. 340.01 (58a).

(rm) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

(s) "Utility terrain vehicle" has the meaning given in s. 23.33 (1) (ng).

(2) REGISTRATION. (a) *Requirement*. No person may operate, and no owner may give another person permission to operate, an off-highway vehicle on an off-highway vehicle trail unless the off-highway vehicle is registered with the department or is exempt from registration under this subsection. No person under the age of 18 may register an off-highway vehicle under this subsection.

(b) *Exemptions*. An off-highway vehicle is exempt from registration with the department if any of the following applies:

1. It is owned by this state or a political subdivision of this state and used for enforcement or emergency purposes.

2. It is owned or operated under contract with a utility and operated for the purpose of utility work.

1           3. It is owned by the United States, another state, or a political subdivision of  
2 that state.

3           (c) *Registration; Class A; fee.* The fee for issuance or renewal of a registration  
4 certificate for a Class A off-highway vehicle is \$50.

5           (d) *Registration; Class B; fee.* The fee for issuance or renewal of a registration  
6 certificate for a Class B off-highway vehicle is \$100.

7           (e) *Registration; commercial owner; fee.* 1. A person who is an off-highway  
8 vehicle manufacturer, off-highway vehicle dealer, off-highway vehicle distributor,  
9 or off-highway vehicle renter or any combination thereof engaged in business in this  
10 state shall register with the department and obtain from the department a  
11 commercial off-highway vehicle certificate.

12           2. The fee for the issuance or renewal of a commercial off-highway vehicle  
13 certificate is \$50 except that the fee for the issuance or renewal of a commercial  
14 off-highway vehicle certificate to an off-highway vehicle manufacturer is \$150.

\*\*\*\*NOTE: Are these commercial registration fee provisions consistent with your  
intent?

  
Comment [JGS3]: Yes.

15           (f) *Other fees.* The fee for the issuance of a duplicate off-highway vehicle  
16 registration certificate or decal and the fee for transfer of an off-highway vehicle  
17 registration certificate is \$5.

18           (g) *Effective period.* An off-highway vehicle registration certificate is valid for  
19 one year.

20           (h) *Registration; issuers.* For the issuance of original or duplicate registration  
21 documentation and for the transfer or renewal of registration documentation, the  
22 department may do any of the following:

1 (e) The secretary of natural resources shall submit the written comments that  
2 he or she receives under par. (b) 2. or (d) before March 10 of the odd-numbered year  
3 to the cochairpersons of the joint committee on finance before March 15 of that  
4 odd-numbered year.

\*\*\*\*NOTE: These provisions are based on the snowmobile council provisions. Do  
they meet your intent?

5 (4) OPERATION OF OFF-HIGHWAY VEHICLES. (a) *Operator's license required* No  
6 person may operate an off-highway vehicle unless the person possesses a valid  
7 operator's license issued under ch. 343.

8 (b) *General restrictions*. No person may operate an off-highway vehicle in the  
9 following manner:

10 1. On public property except on an off-highway vehicle trail that is posted as  
11 open to the operation of off-highway vehicles.

12 2. On the private property of another without the consent of the owner or lessee.  
13 Failure to post private property does not imply consent for off-highway vehicle use.


14 3. In a willful or wanton manner, or with reckless disregard for the safety of  
15 persons or property.

\*\*\*\*NOTE: This standard is different from the standard under the ATV law; see s.  
23.33 (3) (a), stats. You may wish to change the standard so that it is consistent with the  
ATV law.

16 4. On Indian lands without the consent of the tribal governing body or Indian  
17 owner. Failure to post Indian lands does not imply consent for off-highway vehicle  
18 use.

19 5. With any crossbow in his or her possession unless the crossbow is not cocked  
20 or is unloaded and enclosed in a carrying case.

21 6. With any bow in his or her possession unless the bow does not have an arrow  
22 nocked.



Comment [JG54]: (a) Please change  
to "In any careless way so as to  
endanger the person or property of  
another." This is consistent with ATV  
Law.

1           7. With any firearm in his or her possession unless the firearm is unloaded or  
2 is a handgun, as defined in s. 175.60 (1) (bm). This subdivision does not apply to a  
3 firearm that is placed or possessed on an off-highway vehicle that is stationary, as  
4 defined in s. 167.31 (1) (fg).

\*\*\*\*NOTE: Subdivisions 5. to 7. contain language that is different from last session's version of this draft. I have changed the language so that it is consistent with current law under s. 23.33 (3) (eg) and (er) and (3c). Is this OK?

Comment [JGS5]: Yes.

5           8. To drive or pursue any animal except as part of normal farming operations  
6 involving the driving of livestock.

7           9. Except as provided in subd. 10., at a speed exceeding 20 miles per hour.

8           10. When within 150 feet of a dwelling, at a speed exceeding 10 miles per hour.

9           11. In a manner that violates rules promulgated by the department.

10          (c) *Restrictions on public land; department requirements.* 1. No person may  
11 operate an off-highway vehicle on land under the jurisdiction or control of the  
12 department, or in a county forest, as defined in s. 28.11 (2), except on trails  
13 designated by the department, by posted notice, as open for use by off-highway  
14 vehicles.

\*\*\*\*NOTE: This paragraph was included in last session's version of this draft. It must be deleted in the next version of the draft because it is redundant in view of the prohibition contained in par. (b) 1. above and will result in conflicting provisions if retained.

15          2. The department shall establish seasons during which a person may operate  
16 an off-highway vehicle on designated trails in state forest ~~lands~~.

\*\*\*\*NOTE: I think this provision is confusing. It implies, but does not say, that DNR must designate corridors in state forests for use as OHV trails. Do you want to require DNR to establish OHV trails in state forests?

Comment [JGS6]: Yes.

17          3. The department shall prepare maps that identify each off-highway vehicle  
18 trail in this state.

\*\*\*\*NOTE: Do you want to establish a deadline by which DNR must prepare the maps? Should DNR be required to make the maps available on the DNR Internet site or make them available in some other manner?

Comment [JGS7]: Yes. Please require map to be updated annually prior to June 1<sup>st</sup>. Availability on the DNR Web Site is fine. To not exclude reproduction of map in printed format.

1           2. No person who has an alcohol concentration above 0.0 may cause injury to  
2 another person by the operation of an off-highway vehicle.

3           3. No person who has a detectable amount of a restricted controlled substance  
4 in his or her blood may cause injury to another person by the operation of an  
5 off-highway vehicle.

6           4. A person may be charged with and a prosecutor may proceed upon a  
7 complaint based upon a violation of any combination of subd. 1., 2., or 3. for acts  
8 arising out of the same incident or occurrence. If the person is charged with violating  
9 any combination of subd. 1., 2., or 3. in the complaint, the crimes shall be joined under  
10 s. 971.12. If the person is found guilty of any combination of subd. 1., 2., or 3. for acts  
11 arising out of the same incident or occurrence, there shall be a single conviction for  
12 purposes of sentencing. Subdivisions 1., 2., and 3. each require proof of a fact for  
13 conviction that the others do not require.

\*\*\*\*NOTE: For now, I have omitted language as to how convictions are to be counted  
as prior violations. See the accompanying drafter's note.

MG 69  
Comment [JGS8]: Please allow for  
violation to be counted against  
Individuals Drivers License.

14           5. a. In an action under this paragraph, the defendant has a defense if he or she  
15 proves by a preponderance of the evidence that the injury would have occurred even  
16 if he or she had been exercising due care and he or she had not been under the  
17 influence of an intoxicant, did not have an alcohol concentration of more than 0.0, or  
18 did not have a detectable amount of a restricted controlled substance in his or her  
19 blood.

20           b. In an action under subd. 3. that is based on the defendant allegedly having  
21 a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or  
22 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he  
23 or she proves by a preponderance of the evidence that at the time of the incident or

\*\*\*\*NOTE: Isn't it possible that an off-highway vehicle could be less than 8 feet above the ground?

Comment [JGS9]: Orange safety flag must be attached to pole which is attached to front, passengers side bumper.

- 1 (f) It has 2 headlights.
- 2 (g) It has 2 brake lights.
- 3 (h) It has front and rear turn signals.
- 4 (i) It has side markers on the front and rear driver and passenger sides.
- 5 (j) All of the seats are permanently mounted and equipped with shoulder and
- 6 lap safety belts.
- 7 (k) It does not contain an infant or child seat.
- 8 (L) It is equipped with an unopened spill kit approved by the Wisconsin
- 9 Off-Highway Vehicle Association.

\*\*\*\*NOTE: The term "spill kit" should be defined.

- 10 (m) It has a battery that is permanently secured in the vehicle.

\*\*\*\*NOTE: This provision seems to suggest that the battery in the vehicle cannot be replaced. Is this correct?

- 11 (6) NOISE LIMITS. No person may manufacture, sell, rent, or operate an
- 12 off-highway vehicle that is constructed in such a manner that noise emitted from the
- 13 off-highway vehicle exceeds 96 decibels on the A scale as measured in the manner
- 14 prescribed under rules promulgated by the department.

\*\*\*\*NOTE: This provision is based on the ATV and UTV noise limits. OK?

- 15 (7) ACCIDENTS. If an accident results in the death of any person, in the injury
- 16 of any person that requires the treatment of the person by a physician, or in property
- 17 damage of \$500 or more, the operator of each off-highway vehicle involved in the
- 18 accident shall, within 10 days of the date of the accident, provide a report of the
- 19 accident to the department in the form and manner required by the department by
- 20 rule.

Comment [JGS10]: Spill Kit is a self contained spill application capable of absorbing, containing, and collecting a minimum of 3.75 U.S. Gallons of petroleum based product. Kit must allow for containment, removal, and disposal of all captured materials. Kit must also contain safety gloves and safety glasses. Kit must contain at least one 35 gallon disposal bag (color yellow) and materials to close leak in radiator, engine, fuel cell and any and all hoses or lines which may contain petroleum products on the OHV.

Comment [JGS11]: No. Batteries must be secured in a manner by which requires a wrench or key to remove. Temporary strapping is not acceptable.

Comment [JGS12]: This is fine if it also complies with the DOT/DMV requirements for passenger vehicles.

1 (9) AGE RESTRICTIONS FOR OPERATION; SAFETY CERTIFICATE REQUIREMENTS. (a) No  
2 person under the age of 16 may operate an off-highway vehicle on an off-highway  
3 vehicle trail.

4 (b) No person who is 16 or 17 years of age may do any of the following:

5 1. Operate an off-highway vehicle on an off-highway vehicle trail without  
6 wearing protective headgear of the type required under s. 347.485 (1) (a) and with  
7 the chin strap properly fastened.

8 2. Operate an off-highway vehicle on an off-highway vehicle trail unless he or  
9 she is accompanied by another off-highway vehicle that is operated by a person who  
10 is at least 18 years of age.

\*\*\*\*NOTE: What does "accompanied" mean in this context? For example, see s.  
23.33 (1) (a) and (5) (a).

✓  
**Comment [JGS13]:** This definition is  
fine so long as the age for operation is 16  
and not 12 as reflected in the ATV  
legislation.

11 (c) No person who is born on or after December 31, 1993, may operate an  
12 off-highway vehicle on an off-highway vehicle trail unless he or she holds a valid  
13 safety certificate issued under par. (d).

14 (d) The department shall establish or supervise the establishment of a program  
15 of instruction on off-highway vehicle laws, including the intoxicated operation of an  
16 off-highway vehicle law, regulations, safety, and related subjects. The department  
17 shall establish by rule an instruction fee for this program. The department shall  
18 issue certificates to persons successfully completing the program. An instructor  
19 conducting the program of instruction under this paragraph shall collect the fee from  
20 each person who receives instruction. The department may determine the portion  
21 of this fee, which may not exceed 50 percent, that the instructor may retain to defray  
22 expenses incurred by the instructor in conducting the program. The instructor shall  
23 remit the remainder of the fee or, if nothing is retained, the entire fee to the

1 department. The department shall issue a duplicate certificate of accomplishment  
2 to a person who is entitled to a duplicate certificate of accomplishment and who pays  
3 a fee of \$5.

\*\*\*\*NOTE: Do you want the draft to allow a person to satisfy the safety certificate  
requirement by demonstrating that he or she has a safety certificate from another state  
or Canada? See s. 23.33 (5) (b) 1. and 1m., ~~stats~~.

Comment [J6514]: Yes.

4 (10) GRANT PROGRAM. (a) The department shall establish a program to award  
5 grants to organizations that meet the eligibility requirements under par. (b).

6 (b) To be eligible for a grant under this subsection, an organization shall meet  
7 all of the following requirements:

- 8 1. The organization is a nonstock corporation organized in this state.
- 9 2. The organization promotes the operation of off-highway vehicles in a  
10 manner that is safe and responsible and that does not harm the environment.
- 11 3. The organization promotes the operation of off-highway vehicles in a  
12 manner that does not conflict with the laws, rules, and departmental policies that  
13 relate to the operation of off-highway vehicles.
- 14 4. The interest of the organization is limited to the recreational operation of  
15 off-highway vehicles on off-highway vehicle trails and other areas that are off of the  
16 highways.
- 17 5. The organization has a board of directors that has a majority of members who  
18 are representatives of off-highway vehicle clubs.
- 19 6. The organization provides support to off-highway vehicle clubs.

20 (c) An organization receiving a grant under this subsection shall use the grant  
21 moneys to promote and provide support to the program established under sub. (9) (d)  
22 by conducting activities that include all of the following:

1           1. Collecting data on the recreational operation of off-highway vehicles off of  
2 the highways.

3           2. Providing assistance to the department in locating, recruiting, and training  
4 instructors for the program established under sub. (9) (d).

5           3. Attempting to increase participation by current and future off-highway  
6 vehicle operators and owners in the program established under sub. (9) (d).

7           4. In consultation with the department of natural resources and the  
8 department of tourism, creating an outreach program to inform local communities  
9 of appropriate off-highway vehicle use in their communities and of the economic  
10 benefits that may be gained from promoting tourism to attract off-highway vehicle  
11 operators.

12           5. Attempting to improve and maintain its relationship with the department  
13 of natural resources, the department of tourism, off-highway vehicle dealers,  
14 off-highway vehicle manufacturers, all-terrain vehicle clubs, as defined in s. 23.33  
15 (1) (bc), snowmobile clubs, as defined in s. 350.138 (1) (e), snowmobile alliances, as  
16 defined in s. 350.138 (1) (d), and other organizations that promote the recreational  
17 operation of all-terrain vehicles and snowmobiles.

\*\*\*\*NOTE: Do you want to include a reference to utility terrain vehicles in this  
subdivision?

✓  
**Comment [JGS15]:** Yes. Should  
reference also be made to ATV  
Organizations and OHV Organizations  
and OHV Clubs?

18           6. Recruiting, assisting in the training of, and providing support to a corps of  
19 volunteers that will assist in providing instruction on the safe and responsible  
20 operation of off-highway vehicles that is given in the field to off-highway vehicle  
21 operators.


22           7. Publishing a manual in cooperation with the department to be used to train  
23 volunteers in monitoring the recreational operation of off-highway vehicles for

1 safety issues and other issues that relate to the responsible operation of off-highway  
2 vehicles.

3 (d) The department shall pay the grants from the appropriation under s. 20.370  
4 (1) (ir).

5 (11) DAMAGE CLAIM PROGRAM. The department shall establish, by rule, a  
6 program to pay claims to owners of property damaged by the unauthorized operation  
7 of off-highway vehicles. The rules shall specify eligibility requirements and  
8 procedures for obtaining a payment under the program. The department shall make  
9 payments under this subsection from the appropriation under s. 20.370 (?) (?).

....NOTE: How should this program be funded?



**Comment [JGS16]:** From fees collected via the sticker program and from the aforementioned surcharge fee..

10 (12) LOCAL ORDINANCES. (a) Counties, towns, cities, and villages may enact  
11 ordinances regulating off-highway vehicles on off-highway vehicle trails  
12 maintained or designated by the county, city, town, or village.

13 (b) Any county, town, city, or village may enact an ordinance that is in strict  
14 conformity with this section and rules promulgated by the department under this  
15 section if the ordinance encompasses all aspects encompassed by this section.

16 (13) ENFORCEMENT. (a) An officer of the state traffic patrol under s. 110.07 (1),  
17 inspector under s. 110.07 (3), conservation warden appointed by the department  
18 under s. 23.10, county sheriff, or municipal peace officer has authority and  
19 jurisdiction to enforce this section and ordinances enacted in accordance with this  
20 section.

21 (b) No operator of an off-highway vehicle required to be registered under this  
22 section may refuse to stop after being requested or signaled to do so by a law  
23 enforcement officer or a commission warden, as defined in s. 939.22 (5).



(14) PENALTIES. (a) *General penalties.* Any person who violates this section shall forfeit not less than \$250 for a first violation, not less than \$500 for a 2nd violation, and not less than \$1,000 for a 3rd or subsequent violation.

\*\*\*\*NOTE: These penalties should also include a maximum amount for each violation. Also, do you want to specify that for the purpose of "counting" a violation, the later violation must have been committed within a specified period after the previous violation was committed?

Comment [JGS17]: Maximum of no more than \$5000

Comment [JGS18]: Maximum of not more than \$10,000

Comment [JGS19]: Maximum of not more than \$25,000

Comment [JGS20]: 10 year limit

(b) *Safety certificate requirement.* In addition to the penalties under par. (a), the court shall require any person who violates this section to successfully complete the program of instruction on off-highway vehicle laws established by the department under sub. (9) (d), regardless of whether the person has previously successfully completed the program.

(c) *Restoration or replacement of signs and standards.* In addition to any other penalty, the court may order the defendant to restore or replace any uniform off-highway vehicle trail sign or standard that the defendant removed, damaged, defaced, moved, or obstructed.

SECTION 5. 23.45 (1) (d) of the statutes is amended to read:

23.45 (1) (d) "Registration" means any registration documentation, as defined in s. 23.33 (1) (jn), 23.37 (1) (p), or s. 350.01 (10t), or certification or registration documentation, as defined in s. 30.50 (3b), issued by the department or its agents.

SECTION 6. 23.50 (1) of the statutes is amended to read:

23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any administrative rules promulgated thereunder, violations specified under s. 280.98



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State of Wisconsin  
2013 - 2014 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

7/26/13  
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D-Note

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1 AN ACT *to amend* 20.370 (3) (at), 23.45 (1) (d), 23.50 (1), 23.50 (3), 23.53 (1), 23.56  
2 (1), 23.57 (1) (intro.), 23.58, 23.62 (1) (intro.), 30.26 (4) (a) (intro.), 30.26 (4) (b),  
3 30.29 (1) (b), 78.01 (2) (e), 78.01 (2m) (f), 78.40 (1), 78.75 (1m) (a) 2m., 78.75 (1m)  
4 (a) 3., 110.07 (1) (a) 1., 110.07 (3), 322.111, 345.11 (1r), 800.02 (2) (b), 885.235  
5 (1m), 895.043 (6), 895.049, 901.053, 938.17 (1) (intro.), 938.343 (9) and 940.09  
6 (3); and *to create* 15.347 (9), 20.370 (1) (ir), 23.37 and 341.059 of the statutes;  
7 **relating to:** regulation of off-highway vehicles, creating an off-highway  
8 vehicle council, granting rule-making authority, requiring the exercise of  
9 rule-making authority, making <sup>a</sup>an appropriation<sup>s</sup> and providing penalties.

***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Natural Resources (DNR) administers the laws regulating the operation and registration of all-terrain vehicles (ATVs) and utility terrain vehicles (UTVs). This bill establishes requirements for the operation and registration of off-highway vehicles (OHVs) that are similar to the requirements that apply under current law to ATVs and UTVs. The bill defines an OHV as a four-wheel drive vehicle that is capable of cross-country travel on natural terrain without the benefit of a road or trail. The bill excludes ATVs, UTVs, watercraft, and motorcycles from the definition of an OHV.

**OHV trails**

This bill requires DNR to encourage and supervise a system of OHV trails in the same manner that DNR is required under current law to encourage and supervise a system of ATV trails. The bill allows DNR to establish standards and procedures for certifying the designation of OHV trails. As under current law applicable to ATV trails, this bill allows a county, city, village, or town or DNR to designate corridors through land that it owns or controls for use as OHV trails. The bill also requires DNR to prepare maps that identify each OHV trail in this state.

**OHV registration**

This bill creates two classes of OHVs. Under the bill, a Class A OHV is an OHV that qualifies for registration by the Department of Transportation (DOT) under the laws that regulate the operation of vehicles on highways. A Class B OHV is generally one that may not be operated on a highway and that does not qualify for registration by DOT. With certain limited exceptions, the bill requires any person who operates an OHV on an OHV trail to register the OHV with DNR and to pay an annual registration fee. The fee for registration of a Class A OHV is \$50 and the fee for registration of a Class B OHV is \$100. The bill also requires a person who is an OHV manufacturer, dealer, distributor, or renter to register with DNR and obtain a commercial OHV certificate. Any person who registers an OHV with DNR must include the name and address of every owner of the OHV.

This bill authorizes DNR to appoint an agent to accept OHV registration applications on behalf of DNR in the same manner as DNR is authorized to appoint agents to register ATVs and UTVs. As with ATV and UTV registration, the agent is entitled to collect, and retain a portion of, a service fee for providing registration services.

**Class B OHV equipment requirements**

This bill prohibits any person from operating a Class B OHV unless the Class B OHV meets certain requirements. Those requirements include having a minimum of four wheels, being propelled by an electric or internal combustion engine, having a frame-mounted roll cage, having a permanently affixed blaze orange safety flag, and having permanently mounted seats that are equipped with safety belts. The bill also prohibits a person from manufacturing, selling, renting, or operating an OHV in such a manner that it exceeds specified noise limits.

**OHV operation**

The bill prohibits any person from operating ~~an~~ OHV on public property unless the person operates the OHV on an OHV trail. To operate ~~an~~ OHV on private property, the operator must obtain the consent of the property owner.

Under this bill, a person must obtain an operator's license from DOT to operate an OHV. Current law does not require a person to hold an operator's license to operate an ATV or UTV. The bill also prohibits a person from operating ~~an~~ OHV at a speed greater than 20 miles per hour.

Under this bill, only a person who is at least 16 years old may operate an OHV on an OHV trail. The bill provides that if the operator is 16 or 17 years old, he or she ~~must~~ wear protective headgear and ~~must be~~ accompanied by another person who is

may not operate an OHV on an OHV trail unless he or she

INS.  
Analysis

or other established public off-highway vehicle corridor

a Class B

a Class B

a Class B

is

at least 18 years old operating an OHV. Finally, if the operator is a person born on or after December 31, 1993, he or she must hold a valid safety certificate to operate the OHV on an OHV trail. This bill requires DNR to establish a program of instruction on OHV laws and to issue certificates to persons who successfully complete the program. These requirements are similar to the requirements that apply under current law concerning programs of instruction on ATV and UTV laws.

This bill prohibits a person from operating an OHV while under the influence of an intoxicant and requires an OHV operator to submit to certain screening tests if a law enforcement officer has probable cause to believe that the operator is violating or has violated the law prohibiting the intoxicated operation of an OHV. These provisions are similar to the provisions in current law relating to the operation of an ATV or UTV while under the influence of an intoxicant.

### ***OHV council***

This bill creates an OHV council (council) consisting of ~~five~~ <sup>five</sup> members who are knowledgeable in the recreational use of OHVs. The bill requires DNR to distribute any rule that it proposes that affects the operation of OHVs to each member of the council for review and comment. The bill also requires DNR to consult with the council on proposed changes for the succeeding biennium in the appropriations and laws that affect OHVs and requires the council to meet to review the provisions affecting OHVs that are included in each executive budget bill.

### ***OHV grant program and damage claim program***

This bill also requires DNR to establish a program to award grants to organizations that promote the operation of OHV vehicles in a manner that is safe and responsible and that does not harm the environment. An organization that receives a grant under this program must use the grant moneys to promote and provide support to the program of instruction on OHV laws. Under the bill, the grant program is funded by OHV registration fees.

Under this bill, DNR must also promulgate rules to establish a damage claim program to pay claims to owners of property damaged by the unauthorized operation of OHVs.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 15.347 (9) of the statutes is created to read:

2           15.347 (9) OFF-HIGHWAY VEHICLE COUNCIL. There is created in the department  
3 of natural resources an off-highway vehicle council consisting of ~~5~~ <sup>5</sup> members

1 appointed for 3-year terms who are knowledgeable in the various recreational uses  
2 of off-highway vehicles.

3 **SECTION 2.** 20.370 (1) (ir) of the statutes is created to read:

4 20.370 (1) (ir) *Off-highway vehicle fees.* All moneys received under s. 23.37 (2)  
5 (m) for state off-highway vehicle trails, for state law enforcement operations related ✓  
6 to off-highway vehicles, *and for the payment of claims under s. 23.37 (11)* ~~and for grants under s. 23.37 (10).~~

7 **SECTION 3.** 20.370 (3) (at) of the statutes is amended to read:

8 20.370 (3) (at) ~~*Education and safety programs.*~~ For programs or courses of  
9 instruction under ss. 23.33 (5) (d), ~~23.37 (9) (d), 29.591, 30.74 (1) (a) and 350.055 (1).~~  
10 All moneys remitted to the department under ss. 23.33 (5) (d), ~~23.37 (9) (d), 29.563~~  
11 (12) (c) 2., 29.591 (3), 30.74 (1) (b), and 350.055 (1) shall be credited to this  
12 appropriation.

13 **SECTION 4.** 23.37 of the statutes is created to read:

14 **23.37 Off-highway vehicles. (1) DEFINITIONS.** In this section:

15 (ag) "Alcohol beverage" has the meaning given in s. 125.02 (1).

16 (am) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

17 (ar) "All-terrain vehicle" has the meaning given in s. 340.01 (2g).

18 (aw) "Approved public treatment facility" has the meaning given in s. 51.45 (2)

19 (c).

\*\*\*\*NOTE: Editing note. This definition is a placeholder for future penalty provisions.

20 (b) "Class A off-highway vehicle" means an off-highway vehicle that is eligible  
21 for registration under ch. 341.

22 (c) "Class B off-highway vehicle" means an off-highway vehicle that is not  
23 eligible for registration under ch. 341 as provided under s. 341.10 (6).

- (ct) "Lac du Flambeau band" has the meaning given in s. 23-33(1)(id).
- 1 (cf) "Controlled substance" has the meaning given in s. 961.01 (4).
- 2 (ch) "Controlled substance analog" has the meaning given in s. 961.01 (4m).
- 3 (cm) "Intoxicant" means any alcohol beverage, controlled substance, controlled
- 4 substance analog, or other drug or any combination thereof.
- 5 (cp) "Intoxicated operation of an off-highway vehicle law" means sub. (4c) or
- 6 a local ordinance in conformity therewith or, if the operation of an off-highway
- 7 vehicle is involved, s. 940.09 or 940.25.
- 8 (d) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c) and
- 9 includes a person appointed as a conservation warden by the department under s.
- 10 23.10 (1).
- 11 (e) "Motorcycle" has the meaning given in s. 340.01 (32).
- 12 (f) "Off-highway vehicle" means a 4-wheel drive vehicle that is capable of
- 13 cross-country travel on natural terrain without the benefit of a road or trail. An
- 14 off-highway vehicle does not include an all-terrain vehicle, a utility terrain vehicle,
- 15 a watercraft, or a motorcycle.
- 16 (g) "Off-highway vehicle club" means a club consisting of individuals that
- 17 promotes the recreational use of off-highway vehicles.
- 18 (h) "Off-highway vehicle dealer" means a person engaged in the sale of
- 19 off-highway vehicles for profit at wholesale or retail.
- 20 (i) "Off-highway vehicle distributor" means a person who sells or distributes
- 21 off-highway vehicles to off-highway vehicle dealers or who maintains distributor
- 22 representatives.
- 23 (j) "Off-highway vehicle manufacturer" means a person engaged in the
- 24 manufacture of off-highway vehicles for sale to the public.

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5-10

1           (k) “Off-highway vehicle renter” means a person engaged in the rental or  
2 leasing of off-highway vehicles to the public.

3           (L) “Off-highway vehicle trail” means a marked corridor on public property or  
4 on private lands subject to public easement or lease, designated for use by  
5 off-highway vehicle operators by the governmental agency having jurisdiction, but  
6 excluding roadways of highways.

7           (m) “Operate” means to exercise physical control over the speed or direction of  
8 an off-highway vehicle or to physically manipulate or activate any of the controls of  
9 an off-highway vehicle to put it in motion.

10          (mn) “Operation” means the exercise of physical control over the speed or  
11 direction of an off-highway vehicle or the physical manipulation or activation of any  
12 of the controls of an off-highway vehicle necessary to put it in motion.

13          (n) “Operator” means a person who operates an off-highway vehicle, who is  
14 responsible for the operation of an off-highway vehicle, or who is supervising the  
15 operation of an off-highway vehicle.

16          (o) “Owner” means a person who has lawful possession of an off-highway  
17 vehicle by virtue of legal title or equitable interest in the off-highway vehicle that  
18 entitles the person to possession of the off-highway vehicle.

19          (og) “Purpose of authorized analysis” means for the purpose of determining or  
20 obtaining evidence of the presence, quantity, or concentration of any intoxicant in a  
21 person’s blood, breath, or urine.

22          (or) “Refusal law” means sub. (4p) (e) or a local ordinance in conformity  
23 therewith.

24          (p) “Registration documentation” means an off-highway vehicle registration  
25 certificate or a registration decal.

(pm) "Restricted controlled substance" means any of the following:

1. A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in subd. 1.

3. Cocaine or any of its metabolites.

4. Methamphetamine.

5. Delta-9-tetrahydrocannabinol.

(q) "Roadway" has the meaning given in s. 340.01 (54).

\*\*\*NOTE: Please review this definition to ensure that it meets your intent.

(r) "Snowmobile" has the meaning given in s. 340.01 (58a).

(rm) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

(s) "Utility terrain vehicle" has the meaning given in s. 23.33 (1) (ng).

(2) REGISTRATION. (a) *Requirement.* No person may operate, and no owner may give another person permission to operate, an off-highway vehicle on an off-highway vehicle trail unless the off-highway vehicle is registered with the department *under this subsection or sub. (2g)* or is exempt from registration under this subsection. No person under the age of 18 may register an off-highway vehicle under this subsection.

(b) *Exemptions.* An off-highway vehicle is exempt from registration with the department *under this subsection* if any of the following applies:

1. It is owned by this state or a political subdivision of this state and used for enforcement or emergency purposes.

2. It is owned or operated under contract with a utility and operated for the purpose of utility work.

1           3. It is owned by the United States, another state, or a political subdivision of  
2 that state.

3           (c) *Registration; Class A; fee.* The fee for issuance or renewal of a registration  
4 certificate for a Class A off-highway vehicle is \$50.

5           (d) *Registration; Class B; fee.* The fee for issuance or renewal of a registration  
6 certificate for a Class B off-highway vehicle is \$100.

7           (e) *Registration; commercial owner; fee.* 1. A person who is an off-highway  
8 vehicle manufacturer, off-highway vehicle dealer, off-highway vehicle distributor,  
9 or off-highway vehicle renter or any combination thereof engaged in business in this  
10 state shall register with the department and obtain from the department a  
11 commercial off-highway vehicle certificate.

12           2. The fee for the issuance or renewal of a commercial off-highway vehicle  
13 certificate is \$50 except that the fee for the issuance or renewal of a commercial  
14 off-highway vehicle certificate to an off-highway vehicle manufacturer is \$150.

\*\*\*\*NOTE: Are these commercial registration fee provisions consistent with your  
(intent)?

15           (f) *Other fees.* The fee for the issuance of a duplicate off-highway vehicle  
16 registration certificate or decal and the fee for transfer of an off-highway vehicle  
17 registration certificate is \$5.

18           (g) *Effective period.* An off-highway vehicle registration certificate is valid for  
19 one year.

20           (h) *Registration; issuers.* For the issuance of original or duplicate registration  
21 documentation and for the transfer or renewal of registration documentation, the  
22 department may do any of the following:

1           1. Directly issue, transfer, or renew the registration documentation with or  
2 without using the procedures specified in par. (j) 1.

3           2. Appoint persons, who are not employees of the department, as agents of the  
4 department to issue, transfer, or renew the registration documentation using either  
5 or both of the procedures specified in par. (j) 1.

6           (i) *Registration; required information.* The department may not issue a  
7 registration certificate under this subsection for an off-highway vehicle unless the  
8 application for the registration certificate includes the name and address of every  
9 owner of the off-highway vehicle.

10          (j) *Registration; methods of issuance.* 1. For the issuance of original or  
11 duplicate registration documentation and for the transfer or renewal of registration  
12 documentation, the department may implement either or both of the following  
13 procedures:

14           a. A procedure under which the department or an agent appointed under par.  
15 (h) 2. accepts applications for registration documentation and issues a validated  
16 registration receipt at the time the applicant submits the application accompanied  
17 by the required fees.

18           b. A procedure under which the department or an agent appointed under par.  
19 (h) 2. may accept applications for registration documentation and issue to each  
20 applicant all or some of the items of the registration documentation at the time the  
21 applicant submits the application accompanied by the required fees.

22          2. Under either procedure under subd. 1., the applicant shall receive any  
23 remaining items of registration documentation directly from the department at a  
24 later date. The items of registration documentation issued at the time of the  
25 submittal of the application under either procedure shall be sufficient to allow the

1 off-highway vehicle for which the application is submitted to be operated in  
2 compliance with the registration requirements under this subsection. The items of  
3 registration documentation issued under subd. 1. b. shall include at least one  
4 registration decal.

5 (k) *Registration; supplemental fees.* 1. In addition to the applicable fee under  
6 par. (c), (d), or (f), each agent appointed under par. (h) 2. shall collect a service fee of  
7 \$3 each time the agent issues a validated registration receipt under par. (j) 1. a. The  
8 agent shall retain the entire amount of each service fee the agent collects.

9 2. In addition to the applicable fee under par. (c), (d), or (f), the department or  
10 the agent appointed under par. (h) 2. shall collect a service fee of \$5 each time the  
11 procedure under par. (j) 1. b. is provided. The agent shall remit to the department  
12 \$1 of each service fee the agent collects.

13 (L) *Display.* A person who is issued a registration decal under par. (j) shall affix  
14 the decal to the registered off-highway vehicle in such a manner that it may not be  
15 removed. The registration decal shall be displayed on the windshield of a registered  
16 Class A off-highway vehicle on the upper right passenger side. The registration  
17 decal shall be displayed within 2 inches of the right rear brake light on a registered  
18 Class B off-highway vehicle.

19 (m) *Use of fees.* All fees remitted to or collected by the department under this  
20 subsection shall be credited to the appropriation account under s. 20.370 (1) (ir).  
21 From the amounts appropriated under s. 20.370 (1) (ir), the department shall expend  
22 one-third for state off-highway vehicle trails, one-third for state law enforcement  
23 operations related to off-highway vehicles, and one-third for grants under sub. (10).

24 (n) *Rules.* The department may establish by rule additional procedures and  
25 requirements for off-highway vehicle registration.

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10-25

1           (3) DUTIES OF THE OFF-HIGHWAY VEHICLE COUNCIL. (a) The department shall  
2     distribute any rule that it is proposing and that affects the operation of off-highway  
3     vehicles to each member of the off-highway vehicle council for his or her review and  
4     comment at least 20 days before the notice stating that the proposed rule is in final  
5     draft form and is submitted to the legislature in the manner provided under s. 227.19

6     (2). A member of the off-highway vehicle council may submit his or her written  
7     comments on the proposed rule to the department.

8           (b) 1. Before June 30 of each even-numbered year, the department shall consult  
9     with the off-highway vehicle council on the proposed changes for the succeeding  
10    biennium in the appropriations and laws that affect off-highway vehicles or the  
11    operation of off-highway vehicles.

12          2. A member of the off-highway vehicle council may submit before August 1 of  
13    the even-numbered year his or her written comments on the proposed changes  
14    specified in subd. 1. to the secretary of natural resources.

15          (c) The secretary of natural resources shall submit the written comments that  
16    the secretary receives under par. (b) 2. to the natural resources board and to the  
17    secretary of administration with the department's submission of its budget report  
18    under s. 16.42.

19          (d) Before March 1 of each odd-numbered year, the off-highway vehicle council  
20    shall meet and review the provisions that are included in the executive budget bill  
21    or bills that affect off-highway vehicles or the operation of off-highway vehicles. A  
22    member of the off-highway vehicle council may submit his or her written comments  
23    on these provisions to the secretary of natural resources before March 10 of each  
24    odd-numbered year.

(e) The secretary of natural resources shall submit the written comments that he or she receives under par. (b) 2. or (d) before March 10 of the odd-numbered year to the cochairpersons of the joint committee on finance before March 15 of that odd-numbered year.

\*\*\*\*NOTE: These provisions are based on the snowmobile council provisions. Do they meet your intent?

(4) OPERATION OF OFF-HIGHWAY VEHICLES. (a) *Operator's license required.* No person may operate an off-highway vehicle unless the person possesses a valid operator's license issued under ch. 343.

(b) *General restrictions.* No person may operate <sup>class B off-highway vehicles</sup> ~~an~~ off-highway vehicle in the following manner: <sup>a Class B</sup>

1. On public property except on an off-highway vehicle trail that is posted as open to the operation of off-highway vehicles.

2. On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for off-highway vehicle use.

3. In a willful or wanton manner, or with reckless disregard for the safety of persons or property.

\*\*\*\*NOTE: This standard is different from the standard under the ATV law; see s. 23.33 (3) (a), ~~stats~~. You may wish to change the standard so that it is consistent with the ATV law.

INS,  
12-1516 → 4. On Indian lands without the consent of the tribal governing body or Indian owner. Failure to post Indian lands does not imply consent for off-highway vehicle use.

5. With any crossbow in his or her possession unless the crossbow is not cocked or is unloaded and enclosed in a carrying case.

6. With any bow in his or her possession unless the bow does not have an arrow nocked.

1           7. With any firearm in his or her possession unless the firearm is unloaded or  
2 is a handgun, as defined in s. 175.60 (1) (bm). This subdivision does not apply to a  
3 firearm that is placed or possessed on an off-highway vehicle that is stationary, as  
4 defined in s. 167.31 (1) (fg).

\*\*\*\*NOTE: Subdivisions 5. to 7. contain language that is different from last session's version of this draft. I have changed the language so that it is consistent with current law under s. 23.33 (3) (eg) and (er) and (3c). Is this OK?

5           8. To drive or pursue any animal except as part of normal farming operations  
6 involving the driving of livestock.

7           9. Except as provided in subd. 10., at a speed exceeding 20 miles per hour.

8           10. When within 150 feet of a dwelling, at a speed exceeding 10 miles per hour.

9           11. In a manner that violates rules promulgated by the department.

10          (c) *Restrictions on public land; department requirements.* 1. No person may  
11 operate an off-highway vehicle on land under the jurisdiction or control of the  
12 department, or in a county forest, as defined in s. 28.11 (2), except on trails  
13 designated by the department, by posted notice, as open for use by off-highway  
14 vehicles.

\*\*\*\*NOTE: This paragraph was included in last session's version of this draft. It must be deleted in the next version of the draft because it is redundant in view of the prohibition contained in par. (b) 1. above and will result in conflicting provisions if retained.

15          2. The department shall establish seasons during which a person may operate  
16 an off-highway vehicle on designated trails in state forest lands.

\*\*\*\*NOTE: I think this provision is confusing. It implies, but does not say, that DNR must designate corridors in state forests for use as OHV trails. Do you want to require DNR to establish OHV trails in state forests?

17          3. The department shall prepare maps that identify each off-highway vehicle  
18 trail in this state.

\*\*\*\*NOTE: Do you want to establish a deadline by which DNR must prepare the maps? Should DNR be required to make the maps available on the DNR Internet site or make them available in some other manner?

INS.  
13-18

1           (4c) INTOXICATED OPERATION OF AN OFF-HIGHWAY VEHICLE. (a) *Operation.* 1. No  
2 person may operate an off-highway vehicle while under the influence of an  
3 intoxicant.

4           2. No person may operate an off-highway vehicle while the person has an  
5 alcohol concentration above 0.0.

6           3. No person may operate an off-highway vehicle while the person has a  
7 detectable amount of a restricted controlled substance in his or her blood.

8           4. A person may be charged with and a prosecutor may proceed upon a  
9 complaint based upon a violation of any combination of subd. 1., 2., or 3. for acts  
10 arising out of the same incident or occurrence. If the person is charged with violating  
11 any combination of subd. 1., 2., or 3., the offenses shall be joined. If the person is  
12 found guilty of any combination of subd. 1., 2., or 3. for acts arising out of the same  
13 incident or occurrence, there shall be a single conviction for purposes of sentencing.  
14 Subdivisions 1., 2., and 3. each require proof of a fact for conviction that the others  
15 do not require.

16           5. In an action under subd. 3. that is based on the defendant allegedly having  
17 a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or  
18 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he  
19 or she proves by a preponderance of the evidence that at the time of the incident or  
20 occurrence he or she had a valid prescription for methamphetamine or one of its  
21 metabolic precursors, gamma-hydroxybutyric acid, or  
22 delta-9-tetrahydrocannabinol.

23           (b) *Causing injury.* 1. No person while under the influence of an intoxicant may  
24 cause injury to another person by the operation of an off-highway vehicle.

1           2. No person who has an alcohol concentration above 0.0 may cause injury to  
2 another person by the operation of an off-highway vehicle.

3           3. No person who has a detectable amount of a restricted controlled substance  
4 in his or her blood may cause injury to another person by the operation of an  
5 off-highway vehicle.

6           4. A person may be charged with and a prosecutor may proceed upon a  
7 complaint based upon a violation of any combination of subd. 1., 2., or 3. for acts  
8 arising out of the same incident or occurrence. If the person is charged with violating  
9 any combination of subd. 1., 2., or 3. in the complaint, the crimes shall be joined under  
10 s. 971.12. If the person is found guilty of any combination of subd. 1., 2., or 3. for acts  
11 arising out of the same incident or occurrence, there shall be a single conviction for  
12 purposes of sentencing. Subdivisions 1., 2., and 3. each require proof of a fact for  
13 conviction that the others do not require.

\*\*\*\*NOTE: For now, I have omitted language as to how convictions are to be counted  
as prior violations. See the accompanying drafter's note.

14           5. a. In an action under this paragraph, the defendant has a defense if he or she  
15 proves by a preponderance of the evidence that the injury would have occurred even  
16 if he or she had been exercising due care and he or she had not been under the  
17 influence of an intoxicant, did not have an alcohol concentration of more than 0.0, or  
18 did not have a detectable amount of a restricted controlled substance in his or her  
19 blood.

20           b. In an action under subd. 3. that is based on the defendant allegedly having  
21 a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or  
22 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he  
23 or she proves by a preponderance of the evidence that at the time of the incident or

1 occurrence he or she had a valid prescription for methamphetamine or one of its  
2 metabolic precursors, gamma-hydroxybutyric acid, or  
3 delta-9-tetrahydrocannabinol.

4 **(4g) PRELIMINARY BREATH SCREENING TEST.** (a) *Requirement.* A person shall  
5 provide a sample of his or her breath for a preliminary breath screening test if a law  
6 enforcement officer has probable cause to believe that the person is violating or has  
7 violated the intoxicated operation of an off-highway vehicle law and if, prior to an  
8 arrest, the law enforcement officer requested the person to provide this sample.

9 (b) *Use of test results.* A law enforcement officer may use the results of a  
10 preliminary breath screening test for the purpose of deciding whether or not to arrest  
11 a person for a violation of the intoxicated operation of an off-highway vehicle law or  
12 for the purpose of deciding whether or not to request a chemical test under sub. (4p).  
13 Following the preliminary breath screening test, chemical tests may be required of  
14 the person under sub. (4p).

15 (c) *Admissibility.* The result of a preliminary breath screening test is not  
16 admissible in any action or proceeding except to show probable cause for an arrest,  
17 if the arrest is challenged, or to show that a chemical test was properly required of  
18 a person under sub. (4p).

19 (d) *Refusal.* There is no penalty for a violation of par. (a). Subsection (14) (a)  
20 and the general penalty provision under s. 939.61 do not apply to that violation.

21 **(4j) APPLICABILITY OF THE INTOXICATED OPERATION OF AN OFF-HIGHWAY VEHICLE**  
22 **LAW.** (a) Except as provided in par. (b), the intoxicated operation of an off-highway  
23 vehicle law is applicable to all ice-bound waters of this state and to all premises held  
24 out to the public for use of off-highway vehicles, whether such premises are publicly  
25 or privately owned and whether or not a fee is charged for the use thereof.

1 (b) The intoxicated operation of an off-highway vehicle law is not applicable  
2 to the highways of this state and to any other areas to which s. 346.63 (1) or (2m),  
3 346.63 (2) or (6), 940.09 (1), or 940.25 applies or a local ordinance in conformity with  
4 s. 346.63 (1) or (2m) applies.

5 (4L) IMPLIED CONSENT. Any person who engages in the operation of an  
6 off-highway vehicle on those areas enumerated in sub. (4j) (a) is deemed to have  
7 given consent to provide one or more samples of his or her breath, blood, or urine for  
8 the purpose of authorized analysis as required under sub. (4p). Any person who  
9 engages in the operation of an off-highway vehicle on those areas enumerated in sub.  
10 (4j) (a) is considered to have given consent to submit to one or more chemical tests  
11 of his or her breath, blood, or urine for the purpose of authorized analysis as required  
12 under sub. (4p).

13 (4p) CHEMICAL TESTS. (a) *Requirement.* 1. A person shall provide one or more  
14 samples of his or her breath, blood, or urine for the purpose of authorized analysis  
15 if he or she is arrested for a violation of the intoxicated operation of an off-highway  
16 vehicle law and if he or she is requested to provide the sample by a law enforcement  
17 officer. A person shall submit to one or more chemical tests of his or her breath, blood,  
18 or urine for the purpose of authorized analysis if he or she is arrested for a violation  
19 of the intoxicated operation of an off-highway vehicle law and if he or she is  
20 requested to submit to the test by a law enforcement officer.

21 2. A law enforcement officer requesting a person to provide a sample or to  
22 submit to a chemical test under subd. 1. shall inform the person of all of the following  
23 at the time of the request and prior to obtaining the sample or administering the test:

24 a. That he or she is deemed to have consented to tests under sub. (4L).

1           b. That a refusal to provide a sample or to submit to a chemical test constitutes  
2 a violation under par. (e) and is subject to the same penalties and procedures as a  
3 violation of sub. (4c) (a) 1.

4           c. That in addition to the designated chemical test under par. (b) 2., he or she  
5 may have an additional chemical test under par. (c) 1.

6           3. A person who is unconscious or otherwise not capable of withdrawing  
7 consent is presumed not to have withdrawn consent under this paragraph, and if a  
8 law enforcement officer has probable cause to believe that the person violated the  
9 intoxicated operation of an off-highway vehicle law, one or more chemical tests may  
10 be administered to the person without a request under subd. 1. and without  
11 providing information under subd. 2.

12           (b) *Chemical tests.* 1. Upon the request of a law enforcement officer, a test  
13 facility shall administer a chemical test of breath, blood, or urine for the purpose of  
14 authorized analysis. A test facility shall be prepared to administer 2 of the 3  
15 chemical tests of breath, blood, or urine for the purpose of authorized analysis. The  
16 department may enter into agreements for the cooperative use of test facilities.

17           2. A test facility shall designate one chemical test of breath, blood, or urine that  
18 it is prepared to administer first for the purpose of authorized analysis.

19           3. A test facility shall specify one chemical test of breath, blood, or urine, other  
20 than the test designated under subd. 2., that it is prepared to administer for the  
21 purpose of authorized analysis as an additional chemical test.

22           4. A chemical test of blood or urine conducted for the purpose of authorized  
23 analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of  
24 the laboratory of hygiene, department of health services, and department of  
25 transportation under s. 343.305 (6) apply to a chemical test of blood or urine

1 conducted for the purpose of authorized analysis under this subsection. Blood may  
2 be withdrawn from a person arrested for a violation of the intoxicated operation of  
3 an off-highway vehicle law only by a physician, registered nurse, medical  
4 technologist, physician assistant, or person acting under the direction of a physician.  
5 The person who withdraws the blood, the employer of that person, and any hospital  
6 where blood is withdrawn have immunity from civil or criminal liability as provided  
7 under s. 895.53.

8 5. A test facility that administers a chemical test of breath, blood, or urine for  
9 the purpose of authorized analysis under this subsection shall prepare a written  
10 report, which shall include the findings of the chemical test, the identification of the  
11 law enforcement officer or the person who requested a chemical test, and the  
12 identification of the person who provided the sample or submitted to the chemical  
13 test. The test facility shall transmit a copy of the report to the law enforcement officer  
14 and the person who provided the sample or submitted to the chemical test.

15 (c) *Additional and optional chemical tests.* 1. If a person is arrested for a  
16 violation of the intoxicated operation of an off-highway vehicle law or is the operator  
17 of an off-highway vehicle involved in an accident resulting in great bodily harm to  
18 or the death of someone and if the person is requested to provide a sample or to  
19 submit to a test under par. (a) 1., the person may request the test facility to  
20 administer the additional chemical test specified under par. (b) 3. or may request, at  
21 his or her own expense, a reasonable opportunity to have any qualified person  
22 administer a chemical test of his or her breath, blood, or urine for the purpose of  
23 authorized analysis.

24 2. If a person is arrested for a violation of the intoxicated operation of an  
25 off-highway vehicle law and if the person is not requested to provide a sample or to

1 submit to a test under par. (a) 1., the person may request the test facility to  
2 administer a chemical test of his or her breath or may request, at his or her own  
3 expense, a reasonable opportunity to have any qualified person administer a  
4 chemical test of his or her breath, blood, or urine for the purpose of authorized  
5 analysis. If a test facility is unable to perform a chemical test of breath, the person  
6 may request the test facility to administer the designated chemical test under par.  
7 (b) 2. or the additional chemical test under par. (b) 3.

8 3. A test facility shall comply with a request under this paragraph to  
9 administer any chemical test it is able to perform.

10 4. The failure or inability of a person to obtain a chemical test at his or her own  
11 expense does not preclude the admission of evidence of the results of a chemical test  
12 required and administered under pars. (a) and (b).

13 (d) *Admissibility; effect of test results; other evidence.* The results of a chemical  
14 test required or administered under par. (a), (b), or (c) are admissible in any civil or  
15 criminal action or proceeding arising out of the acts committed by a person alleged  
16 to have violated the intoxicated operation of an off-highway vehicle law on the issue  
17 of whether the person was under the influence of an intoxicant or the issue of  
18 whether the person had alcohol concentrations above specified levels or a detectable  
19 amount of a restricted controlled substance in his or her blood. Results of these  
20 chemical tests shall be given the effect required under s. 885.235. This subsection  
21 does not limit the right of a law enforcement officer to obtain evidence by any other  
22 lawful means.

23 (e) *Refusal.* No person may refuse a lawful request to provide one or more  
24 samples of his or her breath, blood, or urine or to submit to one or more chemical tests  
25 under par. (a). A person shall not be considered to have refused to provide a sample

1 or to submit to a chemical test if it is shown by a preponderance of the evidence that  
2 the refusal was due to a physical inability to provide the sample or to submit to the  
3 test due to a physical disability or disease unrelated to the use of an intoxicant.  
4 Issues in any action concerning violation of par. (a) or this paragraph are limited to  
5 the following:

6 1. Whether the law enforcement officer had probable cause to believe the  
7 person was violating or had violated the intoxicated operation of an off-highway  
8 vehicle law.

9 2. Whether the person was lawfully placed under arrest for violating the  
10 intoxicated operation of an off-highway vehicle law.

11 3. Whether the law enforcement officer requested the person to provide a  
12 sample or to submit to a chemical test and provided the information required under  
13 par. (a) 2. or whether the request and information were unnecessary under par. (a)  
14 3.

15 4. Whether the person refused to provide a sample or to submit to a chemical  
16 test.

17 **(4t) REPORT ARREST TO DEPARTMENT.** If a law enforcement officer arrests a person  
18 for a violation of the intoxicated operation of an off-highway vehicle law or the  
19 refusal law, the law enforcement officer shall notify the department of the arrest as  
20 soon as practicable.

21 **(4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN OFF-HIGHWAY VEHICLE**  
22 **WHILE UNDER INFLUENCE OF INTOXICANT.** A person arrested for a violation of sub. (4c)  
23 (a) 1. or 2. or a local ordinance in conformity therewith or sub. (4c) (b) 1. or 2. may  
24 not be released until 12 hours have elapsed from the time of his or her arrest or unless  
25 a chemical test administered under sub. (4p) (a) 1. shows that the person has an

1 alcohol concentration of 0.05 or less, but the person may be released to his or her  
2 attorney, spouse, relative, or other responsible adult at any time after arrest.

3 (4z) PUBLIC EDUCATION PROGRAM. (a) The department shall promulgate rules  
4 to provide for a public education program to do all of the following:

5 1. Inform off-highway vehicle operators of the prohibitions and penalties  
6 included in the intoxicated operation of an off-highway vehicle law.

7 2. Provide for the development of signs briefly explaining the intoxicated  
8 operation of an off-highway vehicle law.

9 (b) The department shall develop and issue an educational pamphlet on the  
10 intoxicated operation of an off-highway vehicle law to be distributed, beginning  
11 within 6 months after the effective date of this paragraph .... [LRB inserts date], to  
12 persons issued off-highway vehicle registration certificates under sub. (2).

13 (5) EQUIPMENT REQUIREMENTS. No person may operate a Class B off-highway  
14 vehicle unless it meets all of the following requirements:

15 (a) It has a minimum of 4 wheels and is propelled by those wheels using an  
16 electric or internal combustion engine.

17 (b) If it is equipped with an internal combustion engine, it has a complete  
18 exhaust system that includes a muffler and a tailpipe.

19 (c) It has a permanently mounted and attached fuel cell or tank.

20 (d) It has a frame-mounted roll cage that is constructed in a manner specified  
21 by the department by rule and that encloses the operator and each passenger.

22 (e) It has a permanently affixed blaze orange safety flag that is at least 144  
23 square inches in size and that is displayed <sup>from a pole that extends</sup> at least 8 feet above the ground on the  
24 front passenger side of the off-highway vehicle.

\*\*\*NOTE: Isn't it possible that an off-highway vehicle could be less than 8 feet above the ground?

(f) It has 2 headlights.

(g) It has 2 brake lights.

(h) It has front and rear turn signals.

(i) It has side markers on the front and rear driver and passenger sides.

(j) All of the seats are permanently mounted and equipped with shoulder and lap safety belts.

(k) It does not contain an infant or child seat.

(L) It is equipped with an unopened ~~spill~~ kit approved by the Wisconsin Off-Highway Vehicle Association.

\*\*\*NOTE: The term "spill kit" should be defined.

(m) It has a battery that is permanently secured in the vehicle

in a manner that requires the use of a wrench or key to remove.

\*\*\*NOTE: This provision seems to suggest that the battery in the vehicle cannot be replaced. Is this correct?

(6) NOISE LIMITS. No person may manufacture, sell, rent, or operate an

a Class B off-highway vehicle that is constructed in such a manner that noise emitted from the off-highway vehicle exceeds 96 decibels on the A scale as measured in the manner prescribed under rules promulgated by the department.

\*\*\*NOTE: This provision is based on the ATV and UTV noise limits. OK?

(7) ACCIDENTS. If an accident results in the death of any person, in the injury of any person that requires the treatment of the person by a physician, or in property damage of \$500 or more, the operator of each off-highway vehicle involved in the accident shall, within 10 days of the date of the accident, provide a report of the accident to the department in the form and manner required by the department by rule.

1 (8) TRAILS. (a) *Department authority.* The department shall encourage and  
2 supervise a system of off-highway vehicle trails. <sup>forests.</sup> *The system shall include trails in state.* The department may establish  
3 standards and procedures for certifying the designation of off-highway vehicle  
4 trails.

5 (b) *Designation.* A town, village, city, county, or the department may designate  
6 corridors through land that it owns or controls, or for which it obtains leases,  
7 easements, or permission, for use as off-highway vehicle trails.

8 (c) *Restrictions.* The designating authority may specify effective periods for the  
9 use of off-highway vehicle trails and may restrict or prohibit the operation of an  
10 off-highway vehicle during certain periods of the year.

11 (d) *Signs.* The department, in cooperation with the department of  
12 transportation, shall establish uniform off-highway vehicle trail signs and  
13 standards.

14 (e) *Interference with signs and standards prohibited.* 1. No person may  
15 intentionally remove, damage, deface, move, or obstruct any uniform off-highway  
16 vehicle trail sign or standard or intentionally interfere with the effective operation  
17 of any uniform off-highway vehicle trail sign or standard if the sign or standard is  
18 legally placed by the state, any municipality, or any authorized individual.

19 2. No person may possess any uniform off-highway vehicle trail sign or  
20 standard of the type established by the department for the warning, instruction, or  
21 information of the public, unless he or she obtained the uniform off-highway vehicle  
22 trail sign or standard in a lawful manner. Possession of a uniform off-highway  
23 vehicle trail sign or standard creates a rebuttable presumption of illegal possession.

1 (9) AGE RESTRICTIONS FOR OPERATION; SAFETY CERTIFICATE REQUIREMENTS. (a) No  
2 person under the age of 16 may operate an off-highway vehicle on an off-highway  
3 vehicle trail.

4 (b) No person who is 16 or 17 years of age may do any of the following:

5 1. Operate an off-highway vehicle on an off-highway vehicle trail without  
6 wearing protective headgear of the type required under s. 347.485 (1) (a) and with  
7 the chin strap properly fastened.

*As subject to the continuous verbal direction and control of*

8 2. Operate an off-highway vehicle on an off-highway vehicle trail unless he or  
9 she is accompanied by another off-highway vehicle that is operated by a person who  
10 is operating another off-highway vehicle and who is at least 18 years of age.

*\*\*\*NOTE: What does "accompanied" mean in this context? For example, see s. 23.33 (1) (a) and (5) (a).*

11 (c) No person who is born on or after December 31, 1993, may operate an  
12 off-highway vehicle on an off-highway vehicle trail unless he or she holds a valid  
13 safety certificate issued under par. (d). *or issued by another state or a province of Canada*

14 (d) The department shall establish or supervise the establishment of a program  
15 of instruction on off-highway vehicle laws, including the intoxicated operation of an  
16 off-highway vehicle law, regulations, safety, and related subjects. The department  
17 shall establish by rule an instruction fee for this program. The department shall  
18 issue certificates to persons successfully completing the program. An instructor  
19 conducting the program of instruction under this paragraph shall collect the fee from  
20 each person who receives instruction. The department may determine the portion  
21 of this fee, which may not exceed 50 percent, that the instructor may retain to defray  
22 expenses incurred by the instructor in conducting the program. The instructor shall  
23 remit the remainder of the fee or, if nothing is retained, the entire fee to the

1 department. The department shall issue a duplicate certificate of accomplishment  
2 to a person who is entitled to a duplicate certificate of accomplishment and who pays  
3 a fee of \$5.

\*\*\*\*NOTE: Do you want the draft to allow a person to satisfy the safety certificate requirement by demonstrating that he or she has a safety certificate from another state or Canada? See s. 23.33 (5) (b) 1. and 1m., stats.

4 (10) GRANT PROGRAM. (a) The department shall establish a program to award  
5 grants to organizations that meet the eligibility requirements under par. (b).

6 (b) To be eligible for a grant under this subsection, an organization shall meet  
7 all of the following requirements:

8 1. The organization is a nonstock corporation organized in this state.

9 2. The organization promotes the operation of off-highway vehicles in a  
10 manner that is safe and responsible and that does not harm the environment.

11 3. The organization promotes the operation of off-highway vehicles in a  
12 manner that does not conflict with the laws, rules, and departmental policies that  
13 relate to the operation of off-highway vehicles.

14 4. The interest of the organization is limited to the recreational operation of  
15 off-highway vehicles on off-highway vehicle trails and other areas that are off of the  
16 highways.

17 5. The organization has a board of directors that has a majority of members who  
18 are representatives of off-highway vehicle clubs.

19 6. The organization provides support to off-highway vehicle clubs.

20 (c) An organization receiving a grant under this subsection shall use the grant  
21 moneys to promote and provide support to the program established under sub. (9) (d)  
22 by conducting activities that include all of the following:

1           1. Collecting data on the recreational operation of off-highway vehicles off of  
2 the highways.

3           2. Providing assistance to the department in locating, recruiting, and training  
4 instructors for the program established under sub. (9) (d).

5           3. Attempting to increase participation by current and future off-highway  
6 vehicle operators and owners in the program established under sub. (9) (d).

7           4. In consultation with the department of natural resources and the  
8 department of tourism, creating an outreach program to inform local communities  
9 of appropriate off-highway vehicle use in their communities and of the economic  
10 benefits that may be gained from promoting tourism to attract off-highway vehicle  
11 operators.

12           5. Attempting to improve and maintain its relationship with the department  
13 of natural resources, the department of tourism, off-highway vehicle dealers,  
14 off-highway vehicle manufacturers, all-terrain vehicle clubs, as defined in s. 23.33  
15 (1) (bc), <sup>utility terrain vehicle clubs,</sup> snowmobile clubs, as defined in s. 350.138 (1) (e), snowmobile alliances, as  
16 defined in s. 350.138 (1) (d), and other organizations that promote the recreational  
17 operation of all-terrain vehicles <sup>utility terrain vehicles,</sup> and snowmobiles.

\*\*\*\*NOTE: Do you want to include a reference to utility terrain vehicles in this  
subdivision?

18           6. Recruiting, assisting in the training of, and providing support to a corps of  
19 volunteers that will assist in providing instruction on the safe and responsible  
20 operation of off-highway vehicles that is given in the field to off-highway vehicle  
21 operators.

22           7. Publishing a manual in cooperation with the department to be used to train  
23 volunteers in monitoring the recreational operation of off-highway vehicles for

1 safety issues and other issues that relate to the responsible operation of off-highway  
2 vehicles.

3 (d) The department shall pay the grants from the appropriation under s. 20.370  
4 (1) (ir).

5 (11) DAMAGE CLAIM PROGRAM. The department shall establish, by rule, a  
6 program to pay claims to owners of property damaged by the unauthorized operation  
7 of off-highway vehicles. The rules shall specify eligibility requirements and  
8 procedures for obtaining a payment under the program. The department shall make  
9 payments under this subsection from the appropriation under s. 20.370 (1) (ir) ✓

\*\*\*NOTE: How should this program be funded?

10 (12) LOCAL ORDINANCES. (a) Counties, towns, cities, and villages may enact  
11 ordinances regulating off-highway vehicles on off-highway vehicle trails  
12 maintained or designated by the county, city, town, or village.

13 (b) Any county, town, city, or village may enact an ordinance that is in strict  
14 conformity with this section and rules promulgated by the department under this  
15 section if the ordinance encompasses all aspects encompassed by this section.

16 (13) ENFORCEMENT. (a) An officer of the state traffic patrol under s. 110.07 (1),  
17 inspector under s. 110.07 (3), conservation warden appointed by the department  
18 under s. 23.10, county sheriff, or municipal peace officer has authority and  
19 jurisdiction to enforce this section and ordinances enacted in accordance with this  
20 section.

21 (b) No operator of an off-highway vehicle required to be registered under this  
22 section may refuse to stop after being requested or signaled to do so by a law  
23 enforcement officer or a commission warden, as defined in s. 939.22 (5).

within 10 years of the first violation

(14) PENALTIES. (a) *General penalties.* Any person who violates this section shall forfeit not less than \$250<sup>nor more than \$5,000</sup> for a first violation, not less than \$500<sup>nor more than \$10,000</sup> for a 2nd violation, and not less than \$1,000<sup>nor more than \$25,000</sup> for a 3rd or subsequent violation.

\*\*\*\*NOTE: These penalties should also include a maximum amount for each violation. Also, do you want to specify that for the purpose of "counting" a violation, the later violation must have been committed within a specified period after the previous violation was committed?

(b) *Safety certificate requirement.* In addition to the penalties under par. (a), the court shall require any person who violates this section to successfully complete the program of instruction on off-highway vehicle laws established by the department under sub. (9) (d), regardless of whether the person has previously successfully completed the program.

(c) *Restoration or replacement of signs and standards.* In addition to any other penalty, the court may order the defendant to restore or replace any uniform off-highway vehicle trail sign or standard that the defendant removed, damaged, defaced, moved, or obstructed.

SECTION 5. 23.45 (1) (d) of the statutes is amended to read:

23.45 (1) (d) "Registration" means any registration documentation, as defined in s. 23.33 (1) (jn), 23.37 (1) (p), or s. 350.01 (10t), or certification or registration documentation, as defined in s. 30.50 (3b), issued by the department or its agents.

SECTION 6. 23.50 (1) of the statutes is amended to read:

23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any administrative rules promulgated thereunder, violations specified under s. 280.98

within 10 years of the violation <sup>immediately</sup> immediately preceding

1 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,  
2 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),  
3 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances  
4 enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or  
5 30.77.

6 **SECTION 7.** 23.50 (3) of the statutes is amended to read:

7 23.50 (3) All actions in municipal court to recover forfeitures, plus costs, fees,  
8 and surcharges imposed under ch. 814, for violations of local ordinances enacted by  
9 any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77 shall  
10 utilize the procedure in ch. 800. The actions shall be brought before the municipal  
11 court having jurisdiction. Provisions relating to citations, arrests, questioning,  
12 releases, searches, deposits, and stipulations of no contest in ss. 23.51 (1m), (3), and  
13 (8), 23.53, 23.54, 23.56 to 23.64, 23.66, and 23.67 shall apply to violations of such  
14 ordinances.

15 **SECTION 8.** 23.53 (1) of the statutes is amended to read:

16 23.53 (1) The citation created under this section shall, in all actions to recover  
17 forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of  
18 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated  
19 thereunder, and any rule of the Kickapoo reserve management board under s. 41.41  
20 (7) (k) be used by any law enforcement officer with authority to enforce those laws,  
21 except that the uniform traffic citation created under s. 345.11 may be used by a  
22 traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law  
23 enforcement agency of a municipality or county or a traffic officer employed under  
24 s. 110.07 in enforcing s. 287.81. In accordance with s. 345.11 (1m), the citation shall  
25 not be used for violations of ch. 350 relating to highway use. The citation may be used

1 for violations of local ordinances enacted by any local authority in accordance with  
2 s. 23.33 (11) (am), 23.37 (12), or 30.77.

3 **SECTION 9.** 23.56 (1) of the statutes is amended to read:

4 23.56 (1) A person may be arrested for a violation of those statutes enumerated  
5 in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the  
6 Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances  
7 enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or  
8 30.77, after a warrant that substantially complies with s. 968.04 has been issued.  
9 Except as provided in sub. (2), the person arrested shall be brought without  
10 unreasonable delay before a court having jurisdiction to try the action.

11 **SECTION 10.** 23.57 (1) (intro.) of the statutes is amended to read:

12 23.57 (1) (intro.) A person may be arrested without a warrant when the  
13 arresting officer has probable cause to believe that the person is committing or has  
14 committed a violation of those statutes enumerated in s. 23.50 (1), any  
15 administrative rules promulgated thereunder, any rule of the Kickapoo reserve  
16 management board under s. 41.41 (7) (k), or any local ordinances enacted by any local  
17 authority in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77; and:

18 **SECTION 11.** 23.58 of the statutes is amended to read:

19 **23.58 Temporary questioning without arrest.** After having identified  
20 himself or herself as an enforcing officer, an enforcing officer may stop a person in  
21 a public place for a reasonable period of time when the officer reasonably suspects  
22 that such person is committing, is about to commit or has committed a violation of  
23 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated  
24 thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7)  
25 (k), or any local ordinances enacted by any local authority in accordance with s. 23.33

1 (11) (am), 23.37 (12), or 30.77. Such a stop may be made only where the enforcing  
2 officer has proper authority to make an arrest for such a violation. The officer may  
3 demand the name and address of the person and an explanation of the person's  
4 conduct. Such detention and temporary questioning shall be conducted in the  
5 vicinity where the person was stopped.

6 **SECTION 12.** 23.62 (1) (intro.) of the statutes is amended to read:

7 23.62 (1) (intro.) Whenever an enforcing officer has probable cause to believe  
8 that a person subject to his or her authority is committing or has committed a  
9 violation of those statutes enumerated in s. 23.50 (1), any administrative rules  
10 promulgated thereunder, any rule of the Kickapoo reserve management board under  
11 s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance  
12 with s. 23.33 (11) (am), 23.37 (12), or 30.77, the officer may proceed in the following  
13 manner:

14 **SECTION 13.** 30.26 (4) (a) (intro.) of the statutes is amended to read:

15 30.26 (4) (a) (intro.) The department may not prohibit the crossing of a bridge  
16 over a wild river by an all-terrain vehicle or utility terrain vehicle traveling on an  
17 all-terrain vehicle trail, as defined under s. 23.33 (1) (d), by an off-highway vehicle  
18 traveling on an off-highway vehicle trail, as defined under s. 23.37 (1) (L), or by a  
19 snowmobile traveling on a snowmobile trail, as defined under s. 350.01 (17), that is  
20 constructed in any of the following locations:

21 **SECTION 14.** 30.26 (4) (b) of the statutes is amended to read:

22 30.26 (4) (b) The state shall permit all-terrain vehicles, utility terrain vehicles,  
23 and snowmobiles to travel in a corridor across any state land that separates an  
24 all-terrain vehicle trail or a snowmobile trail and the bridges constructed at the  
25 locations listed under par. (a).

\*\*\*\*NOTE: Do you want to amend this provision to include off-highway vehicles?

1           **SECTION 15.** 30.29 (1) (b) of the statutes is amended to read:

2           30.29 (1) (b) "Motor vehicle" includes a utility terrain vehicle, as defined in s.  
3           23.33 (1) (ng), and an all-terrain vehicle, as defined in s. 340.01 (2g), and an  
4           off-highway vehicle, as defined in s. 23.37 (1) (f).

5           **SECTION 16.** 78.01 (2) (e) of the statutes is amended to read:

6           78.01 (2) (e) Gasoline sold for nonhighway use in mobile machinery and  
7           equipment; other than use in a snowmobile, an all-terrain vehicle or utility terrain  
8           vehicle that is not registered for private use under s. 23.33 (2) (d), a Class B  
9           off-highway vehicle registered under s. 23.37, or a recreational motorboat; and  
10          delivered directly into the consumer's storage tank in an amount of not less than 100  
11          gallons.

12          **SECTION 17.** 78.01 (2m) (f) of the statutes is amended to read:

13          78.01 (2m) (f) It is dyed diesel fuel and is sold for off-highway use other than  
14          use in a snowmobile, an all-terrain vehicle or utility terrain vehicle that is not  
15          registered for private use under s. 23.33 (2) (d) or (2g), a Class B off-highway vehicle  
16          registered under s. 23.37, <sup>(2)(a) or (2g)</sup> or in a recreational motorboat or if no claim for a refund  
17          for the tax on the diesel fuel may be made under s. 78.75 (1m) (a) 3.

18          **SECTION 18.** 78.40 (1) of the statutes is amended to read:

19          78.40 (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax at the rate  
20          determined under ss. 78.405 and 78.407 is imposed on the use of alternate fuels. The  
21          tax, with respect to all alternate fuel delivered by an alternate fuel fuels dealer into  
22          supply tanks of motor vehicles in this state, attaches at the time of delivery and shall  
23          be collected by the dealer from the alternate fuels user and shall be paid to the  
24          department. The tax, with respect to alternate fuels acquired by any alternate fuels

1 user other than by delivery by an alternate ~~fuel~~ fuels dealer into a fuel supply tank  
2 of a motor vehicle, or of a snowmobile, an all-terrain vehicle or utility terrain vehicle  
3 that is not registered for private use under s. 23.33 (2) (d) or (2g), a Class B  
4 off-highway vehicle registered under s. 23.37, <sup>(2)(a) or (2g)</sup> or a recreational motorboat, attaches  
5 at the time of the use of the fuel and shall be paid to the department by the user. The  
6 department may permit any supplier of alternate fuels to report and pay to the  
7 department the tax on alternate fuels delivered into the storage facility of an  
8 alternate fuels user or retailer which will be consumed for alternate fuels tax  
9 purposes or sold at retail.

10 **SECTION 19.** 78.75 (1m) (a) 2m. of the statutes is amended to read:

11 78.75 (1m) (a) 2m. A person who uses motor vehicle fuel or an alternate fuel  
12 upon which has been paid the tax required under this chapter for the purpose of  
13 operating an all-terrain vehicle, as defined under s. 340.01 (2g), ~~or~~ a utility terrain  
14 vehicle, as defined under s. 23.33 (1) (ng), <sup>a Class B</sup> ~~or an off-highway vehicle, as defined under~~  
15 s. 23.37 (1) (f), may not be reimbursed or repaid the amount of tax paid unless the  
16 all-terrain vehicle or utility terrain vehicle is registered for private use under s.  
17 23.33 (2) (d) or (2g), <sup>or the off-highway vehicle is registered under</sup>  
~~s. 23.37 (2)(a) or (2g)~~

\*\*\*NOTE: Amend?

18 **SECTION 20.** 78.75 (1m) (a) 3. of the statutes is amended to read:

19 78.75 (1m) (a) 3. Claims under subd. 1. shall be made and filed. The forms shall  
20 indicate that refunds are not available for motor vehicle fuel or alternate fuels used  
21 for motorboats, except motorboats exempt from registration as motor vehicles under  
22 s. 341.05 (20) and motorboats that are not recreational motorboats, or motor vehicle  
23 fuel or alternate fuels used for snowmobiles and that the estimated snowmobile  
24 motor vehicle fuel or alternate fuels tax payments are used for snowmobile trails and

1 areas. The forms shall indicate that refunds are not available for motor vehicle fuel  
2 or alternate fuels used for all-terrain vehicles or utility terrain vehicles unless the  
3 vehicle is registered for private use under s. 23.33 (2) (d) or (2g) and shall indicate  
4 that estimated all-terrain vehicle or utility terrain vehicle motor vehicle fuel or  
5 alternate fuels tax payments are used for all-terrain vehicle trails and areas. The  
6 forms shall also indicate that refunds are not available for the tax on less than 100  
7 gallons. The department shall distribute forms in sufficient quantities to each  
8 county clerk.

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✓

\*\*\*\*NOTE: Amend?

9 **SECTION 21.** 110.07 (1) (a) 1. of the statutes is amended to read:

10 110.07 (1) (a) 1. Enforce and assist in the administration of this chapter and  
11 chs. 194, 218, 341 to 349 and 351, and ss. 23.33, 23.37, 125.07 (4) (b), 125.085 (3) (b),  
12 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders  
13 or rules issued pursuant thereto.

14 **SECTION 22.** 110.07 (3) of the statutes is amended to read:

15 110.07 (3) The secretary may employ inspectors who may not wear the uniform  
16 of the state patrol, whose duties shall be to enforce and assist in administering s.  
17 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, s. ss. 23.33, and  
18 23.37, the inspection requirements of s. 121.555 (2) (b) and the requirements under  
19 s. 346.45 (4) for vehicles being used to transport hazardous materials. Such  
20 inspectors, in the performance of these duties, shall have the powers and authority  
21 of state traffic officers. For the purpose of death, disability and retirement coverage,  
22 such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub.  
23 (5), the secretary may clothe and equip inspectors as the interest of public safety and  
24 their duties require.

1       **SECTION 23.** 322.111 of the statutes is amended to read:

2       **322.111 Article 111 — Drunken or reckless operation of an all-terrain**  
3 **vehicle, utility terrain vehicle, off-highway vehicle, vehicle, snowmobile,**  
4 **aircraft, or vessel.** Any person who violates s. 23.33 (3) (a) or (4c), 23.37 (4) (a) or  
5 (4c), 30.68, 30.681, 114.09, 346.62, 346.63 (1) or (2), 350.10 (1) (b), 350.101, 940.25,  
6 or 940.09 where the offense involved the operation or physical control of an aircraft,  
7 all-terrain vehicle, utility terrain vehicle, off-highway vehicle, snowmobile, vehicle  
8 or vessel on or off a highway shall be punished as the court-martial may direct.

9       **SECTION 24.** 341.059 of the statutes is created to read:

10       **341.059 Off-highway vehicles.** Class B off-highway vehicles, as defined in  
11 s. 23.37 (1) (c), are not required to be registered under this chapter but shall be  
12 registered under s. 23.37 (2). *or (2g)*

13       **SECTION 25.** 345.11 (1r) of the statutes is amended to read:

14       **345.11 (1r)** The uniform traffic citation or the citation form under s. 23.54 shall  
15 be used for violations of ~~s. ss. 23.33 and 23.37~~ relating to highway use or ordinances  
16 enacted in accordance with ~~that section~~ those sections if the violation is committed  
17 on a highway, but no points may be assessed against the driving record of the  
18 operator of an all-terrain vehicle ~~or~~, utility terrain vehicle, or off-highway vehicle.  
19 When the uniform traffic citation is used, the report of conviction shall be forwarded  
20 to the department. When the citation form under s. 23.54 is used, the procedure in  
21 ss. 23.50 to 23.85 applies.

22       **SECTION 26.** 800.02 (2) (b) of the statutes is amended to read:

23       **800.02 (2) (b)** Except for parking violations, in traffic regulation actions in  
24 municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu  
25 of the citation form specified in par. (ag). In actions for violations of local ordinances

1 enacted in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77, the citation form  
2 specified in s. 23.54 shall be used in lieu of the citation form specified in par. (ag).

3 **SECTION 27.** 885.235 (1m) of the statutes is amended to read:

4 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m)  
5 or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the  
6 time in question, as shown by chemical analysis of a sample of the person's blood or  
7 urine or evidence of the amount of alcohol in the person's breath, is admissible on the  
8 issue of whether he or she had an alcohol concentration in the range specified in s.  
9 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol  
10 concentration above 0.0 under s. 23.37 (4c) (a) 2. or 346.63 (7) if the sample was taken  
11 within 3 hours after the event to be proved. The fact that the analysis shows that  
12 the person had an alcohol concentration of more than 0.0 but not more than 0.08 is  
13 prima facie evidence that the person had an alcohol concentration in the range  
14 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an  
15 alcohol concentration above 0.0 under s. 23.37 (4c) (a) 2. or 346.63 (7).

16 **SECTION 28.** 895.043 (6) of the statutes is amended to read:

17 895.043 (6) LIMITATION ON DAMAGES. Punitive damages received by the plaintiff  
18 may not exceed twice the amount of any compensatory damages recovered by the  
19 plaintiff or \$200,000, whichever is greater. This subsection does not apply to a  
20 plaintiff seeking punitive damages from a defendant whose actions under sub. (3)  
21 included the operation of a vehicle, including a motor vehicle as defined under s.  
22 340.01 (35), a snowmobile as defined under s. 340.01 (58a), an all-terrain vehicle as  
23 defined under s. 340.01 (2g), a utility terrain vehicle as defined under s. 23.33 (1) (ng),  
24 an off-highway vehicle as defined under s. 23.37 (1) (f), and a boat as defined under  
25 s. 30.50 (2), while under the influence of an intoxicant to a degree that rendered the

1 defendant incapable of safe operation of the vehicle. In this subsection, “intoxicant”  
2 has the meaning given in s. 30.50 (4e).

3 **SECTION 29.** 895.049 of the statutes is amended to read:

4 **895.049 Recovery by a person who fails to use protective headgear**  
5 **while operating certain motor vehicles.** Notwithstanding s. 895.045, failure by  
6 a person who operates or is a passenger on a utility terrain vehicle, as defined in s.  
7 23.33 (1) (ng), a motorcycle, as defined in s. 340.01 (32), an all-terrain vehicle, as  
8 defined in s. 340.01 (2g), an off-highway vehicle, as defined in s. 23.37 (1) (f), or a  
9 snowmobile, as defined in s. 340.01 (58a), on or off a highway, to use protective  
10 headgear shall not reduce recovery for injuries or damages by the person or the  
11 person’s legal representative in any civil action. This section does not apply to any  
12 person required to wear protective headgear under s. 23.33 (3g), 23.37 (9) (b) 1., or  
13 347.485 (1).

14 **SECTION 30.** 901.053 of the statutes is amended to read:

15 **901.053 Admissibility of evidence relating to use of protective**  
16 **headgear while operating certain motor vehicles.** Evidence of use or nonuse  
17 of protective headgear by a person, other than a person required to wear protective  
18 headgear under s. 23.33 (3g), 23.37 (9) (b) 1., or 347.485 (1), who operates or is a  
19 passenger on a utility terrain vehicle, as defined in s. 23.33 (1) (ng), a motorcycle, as  
20 defined in s. 340.01 (32), an all-terrain vehicle, as defined in s. 340.01 (2g), an  
21 off-highway vehicle, as defined in s. 23.37 (1) (f), or a snowmobile, as defined in s.  
22 340.01 (58a), on or off a highway, is not admissible in any civil action for personal  
23 injury or property damage. This section does not apply to the introduction of such  
24 evidence in a civil action against the manufacturer or producer of the protective  
25 headgear arising out of any alleged deficiency or defect in the design or manufacture

1 of the protective headgear or, with respect to such use of protective headgear, in a civil  
2 action on the sole issue of whether the protective headgear contributed to the  
3 personal injury or property damage incurred by another person.

4 **SECTION 31.** 938.17 (1) (intro.) of the statutes is amended to read:

5 938.17 (1) TRAFFIC, BOATING, SNOWMOBILE, ALL-TERRAIN VEHICLE, AND UTILITY  
6 TERRAIN VEHICLE, AND OFF-HIGHWAY VEHICLE VIOLATIONS. (intro.) Except for violations  
7 of ss. 342.06 (2) and 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when  
8 death or injury occurs, courts of criminal and civil jurisdiction have exclusive  
9 jurisdiction in proceedings against juveniles 16 years of age or older for violations of  
10 s. 23.33 and 23.37, of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic  
11 regulations, as defined in s. 345.20, and nonmoving traffic violations, as defined in  
12 s. 345.28 (1). A juvenile charged with a traffic, boating, snowmobile, all-terrain  
13 vehicle, ~~or utility terrain vehicle~~, or off-highway vehicle offense in a court of criminal  
14 or civil jurisdiction shall be treated as an adult before the trial of the proceeding  
15 except that the juvenile may be held in secure custody only in a juvenile detention  
16 facility. A juvenile convicted of a traffic, boating, snowmobile, all-terrain vehicle, ~~or~~  
17 utility terrain vehicle, or off-highway vehicle offense in a court of criminal or civil  
18 jurisdiction shall be treated as an adult for sentencing purposes except as follows:

19 **SECTION 32.** 938.343 (9) of the statutes is amended to read:

20 938.343 (9) ALL-TERRAIN ~~OR VEHICLE~~, UTILITY TERRAIN VEHICLE, OR OFF-HIGHWAY  
21 VEHICLE SAFETY COURSE. If the violation is one under s. 23.33 or under an ordinance  
22 enacted in accordance with s. 23.33 concerning the use of all-terrain vehicles or  
23 utility terrain vehicles, order the juvenile to attend an all-terrain vehicle or utility  
24 terrain vehicle safety course. If the violation is one under s. 23.37 or under an

1 ordinance enacted in accordance with s. 23.37 (12) concerning the use of off-highway  
2 vehicles, order the juvenile to attend an off-highway vehicle safety course.

3 **SECTION 33.** 940.09 (3) of the statutes is amended to read:

4 940.09 (3) An officer who makes an arrest for a violation of this section shall  
5 make a report as required under s. 23.33 (4t), 23.37 (4t), 30.686, 346.635 or 350.106.

6 **SECTION 34. Nonstatutory provisions.**

7 (1) Notwithstanding the length of terms specified in section 15.347 (9) of the  
8 statutes, as created by this act, the governor shall appoint <sup>1</sup>~~3~~ of the initial members  
9 of the off-highway vehicle council for terms expiring on June 30, 2016, <sup>2</sup>~~3~~ of the initial  
10 members of the off-highway vehicle council for terms expiring on June 30, 2017, and  
11 <sup>2</sup>~~3~~ of the initial members of the off-highway vehicle council for terms expiring on June  
12 30, 2018.

13 (END)